

QUIZ No. 2 [100 points plus extra credit opportunities]

Instructions: Please use all notes, your class text, Montana Code Annotated "School Laws of Montana", and independent research as needed. You may have to do a little research into areas we did not have time to fully cover in class. **Do not confer with other students, your mentor, the students who took my class last year, or anyone else.** Please do not use the answer sheet from tests given in prior years if you happen to have found a copy of such a thing.

Your answers are due to me no later than midnight on December 3rd. Please email them directly to me (mduncan@feltmartinlaw.com). Please put your **name on your test** because I will be printing it out to grade.

1. You are the principal of a high school which has an open campus. At lunch, three students drive to the local fast food place, and while there, one of the students takes a gun from his backpack, shoots the cashier, injures one of the other students, and is struck by an automobile as he runs from the parking lot. Eventually, you and the school district are sued in 5 different lawsuits by the restaurant, the cashier, and all three students' parents. Address each of the following separate fact scenarios in a short (3-4 sentence) answer:

- a. (8 points) You have a close relationship with the perpetrator because he has been a discipline problem every minute of his time in your school. Two years ago, you were given a copy of his English class journal in which he described his fantasy about shooting up a McDonalds. How does this fact affect your defense and potential liability in this lawsuit?
- b. (5 points) A week before this incident, the student council president (an honor student who has an excellent reputation for honesty and sincerity) approaches you to tell you that he overheard two kids talking in the bathroom about carrying a gun to school to "see if they could get away with it" and "to make sure they won if there was a battle with the rival gang". He told you the names of the two kids, having used his yearbook to identify them. Should you search the lockers, backpacks, cars, and/or persons of those two students? If yes, explain how you would go about doing it. If no, explain why it would be inappropriate.
- c. (2 points) If you do search and you don't find a gun, but you do find marijuana (you suspect that is what it is...you wouldn't actually know because you have never seen it or smelled it in your whole life), can you discipline for drug possession or can you only discipline if you found the thing that you were looking for?

- d. (3 points) What is the law regarding discipline for possession of a weapon on school grounds?
 - e. (10 points) What is your duty to supervise students in Montana, and did the school or you breach that duty? Analyze each plaintiff's claim separately in writing this answer.
 - f. (2 points) Are you personally at risk (ie. your money and property will be used to satisfy a judgment against you) if you are found liable by a jury? Is there a way to protect yourself from losing your property and how do you obtain this protection?
2. (5 points) Can a teacher in Montana restrain a student? If so, under what circumstances. (Extra credit for correct citation to authority.)
3. (15 points) Two weeks before the football playoffs, the janitor finds a phone under a bench and gives it to you (the principal). There is no name engraved on the phone, so you open it up to see if you can find out to whom it belongs so you can return it. When you press a few buttons, up pops a picture message (mean and nasty comment) showing one of the football players naked in the shower. You immediately close that window. You press the "contacts" button, see that there is an ICE listed, and from that you determine the owner of the phone. Based upon what you saw, you conduct an investigation and determine that the boy in the picture endured name-calling, taunting, and repeated verbal harassment throughout his time on any athletic teams. You also determine that the coaches knew about it and that it had been reported to your athletic director and your now-retired assistant principal. You learn that this boy had been given little or no playing time once he had complained about the harassment to the coach. The pictures had been sent throughout the student body, which caused the taunting to spread into the halls and classrooms.
- a. Are you allowed to look at the phone messages?
 - b. Are you allowed to discipline the student(s) who were using their phones to spread the pictures and comments?
 - c. Will you impose any teacher/coach discipline?

Explain your answers with a few short sentences referencing any constitutional or statutory provisions that might apply and/or any Supreme Court cases on these subjects.

4. (5 points) Your enrolled student turns 19 in February of his senior year. Does Montana law require the school to continue to educate him? A family moves into your

District in January and seeks to enroll all their children ages 4 through 19. Does Montana law require you to do so? Extra credit for citations to the relevant statutes and your school's policy (block copy or quote it here).

5. (10 points) When can a school create a random drug-testing program of students?
6. (9 points) It is May, and your Board of Trustees expects a budget deficit. You, the Superintendent, are obligated to analyze your staffing situation and determine whether it is necessary to make some cuts. There have been a few teachers who signed their retirement letters, but it looks like you will need to cut two more teachers. You have 4 non-tenure teachers. Gleefully, you rub your hands together. You can pink slip the two non-tenure female teachers who are always complaining about how boys sports get more money (they get more spectators, too), how there is only one women's bathroom and 7 men's rooms, how the men get first crack at all the extra stipend positions etc. You could never terminate them for cause because they are quite skilled in the classroom, but now the budget will give you your chance.
 - a. As long as you follow the statutory process in Mont. Code Ann. Sec. 20-4-206 and give them notice before June 1st, the District is free from any risk. True or False
 - b. Title VII, Title IX, the Montana Human Rights Act, and the Governmental Code of Fair Practices could form the basis for a complaint against the District for discrimination and retaliation even though you followed the correct procedure for non-renewal under the school laws of Montana. True or False
 - c. The teachers can file suit for an unconstitutional infringement on their free speech rights. True or False
7. (6 points) Does a School District have an obligation to notify parents/guardians of a student's absence from school? Does the age of the student affect any notification requirements? Extra credit for citation.
8. (5 points) Your district charges tuition for any students to attend who do not reside in the district boundaries. On August 15th, an elderly woman appears in your office with her 10 year old grandson and explains that the identity of his father has never been confirmed, and the mother has been missing for about 3 months. She left a note on the kitchen counter in the trailer in Cheyenne, Wyoming with a bus ticket and instructions for him to get to grandma's. She didn't know when she would be back—it would depend on how long they would let her stay in rehab. She left no address or other contact info. Describe what grandmother is required to do to be able to enroll the child

in your school without paying tuition. [Hint: we did not have time to cover this in class. Look for the specific statute in your Montana Code Annotated "School Laws of Montana" book.]

9. (6 points) Three people apply for the open High School P.E. teaching position. The job description requires that the teacher be able to demonstrate each of the physical activities in the curriculum, including volleyball, badminton, basketball, baseball, flag football, tennis, ultimate Frisbee, wrestling, and various exercises and conditioning. All three hold the required endorsements, and all three have 5-7 years experience in another District. You interview all three applicants. Smith has outstanding references, coaching experience, and a wonderful personality. He clearly has a heart for kids and expresses some creative ideas for making PE fun, even for the kids who hate PE. However, Smith hasn't taught for several years and appears to have a limp and a prosthetic arm. You would like to offer him the job, but you assume he can't fulfill the requirements of the job description.
- He is disabled as defined by the Americans with Disabilities Act. (True or False)
 - You can offer him the job conditionally, but then require him to have a medical assessment to determine whether he can perform the essential functions of the job. (True or False)
 - Smith explains that he can perform the essential functions of the job as long as you hire an aide to assist in the classroom and demonstrate the fundamentals of the various activities. You are obligated to hire him *and* the aide (True or False or Maybe)

Extra credit: Explain the obligation of reasonable accommodation under the ADA.

10. (9 points) A janitor has excessive absenteeism, and the school is a filthy mess. The other janitors cannot continually cover for her and are starting to complain. Teachers are complaining about the unwashed floors and desks. The board and community are complaining about the mess under the bleachers and in the balcony of the gym. The janitor hurt her back when she was lifting the mop bucket and has been seeing an orthopedic physician and physical therapist. What are the issues that need to be considered and addressed in dealing with the absenteeism.

ALL OF THE FOLLOWING QUESTIONS WILL GIVE YOU MORE EXTRA CREDIT:

11. Congress addressed the issue of surveys that are conducted in schools in the Protection of Pupil Rights Amendment to FERPA (20 U.S.C. Sec. 1232h; 34 CFR Part 98). It protects the rights of students and parents in two ways. Please summarize the two concepts.
12. Do the Armed Forces have the right to student information for use in recruiting? If so, what information? Provide citation.

ASSIGNMENT #4 [75 points]

Develop a one-hour training session for coaches, teachers, and students that addresses bullying, hazing, and Title IX discrimination, harassment, and retaliation issues.

[Be creative. Figure out the best way to reach into the hearts and minds of everyone in the school so that they are empowered to not only act right but to do the right thing when something bad is going on.]

Assignment 5 [due midnight December 3rd]

Statement/Question	True	False	Citation/Notes <small>(extra credit)</small>
Students disabled under the IDEA are also protected under §504.			
A substantial limitation means a student is limited in the performance of a major life activity based on a comparison of the individual's ability to perform a MLA (or MBF) with how most people in the general population perform the MLA (major life activity).			
Accommodations must be designed to produce achievement equal to that of non-disabled students.			
When requested in writing by parents, the §504 team must conduct an evaluation.			
When a parent refuses an IEP and insists on a §504 plan, a 504 plan must be written.			
Major life activities are not limited to such things as hearing, seeing, walking, breathing, and learning.			
A §504 plan is a legally sufficient substitute for an IDEA IEP.			
School districts are required to implement §504 plans from other districts.			
School districts are required to implement IEP's from other districts.			
The disciplinary protections of the IDEA also apply to §504 students.			
§504 evaluation regulations are found verbatim in the IDEA regulations.			
A physician's diagnosis is sufficient to determine §504 eligibility.			
Section §504 requires local grievance procedures.			
In addition to those listed, other functions may be classified as major life activities if the functions are essential for daily living.			
Evaluation materials under §504 must be tailored to assess specific areas of educational need.			
§504 provides nondiscrimination protections to students whose learning problems are caused by environmental, cultural, or economic factors.			
§504 regulations require parents to be members of the placement team.			
The IDEA and/or its regulations require the parents to be members of the eligibility determination team.			

Assignment 5 [due midnight December 3rd]

Both IDEA and §504 require school districts to identify and locate every qualified handicapped person residing in its jurisdiction who is not receiving a public education.			
Excessive medically related absences are sufficient to trigger an evaluation under §504.			
Parental consent is required prior to implementing §504 accommodations.			
§504 requires school districts to provide an independent educational evaluation upon parental request.			
Due process hearings are available under IDEA but not §504.			
The §504 regulations require students be provided a reevaluation every three years.			
The IDEA requires that identified students be provided with a reevaluation every three years.			
§504 requires the use of mediation to resolve §504 complaints.			
Students exiting IDEA are automatically entitled to a §504 plan.			
Implementing the IDEA IEP is one means of meeting the §504 requirement for an individualized accommodation plan.			
There is no requirement for a manifestation determination for §504 students who violate code of conduct rules regarding alcohol and drugs.			
A manifestation determination is required in order to suspend an IDEA student for more than 10 days.			
If an IDEA student is suspended for more than 10 days, FAPE must continue to be provided.			
An impairment that is episodic or in remission is a disability if it would substantially limit a MLA when active.			
§504 requires schools to maximize the educational performance for eligible students.			
§504 provides for attorney fees when parents are the prevailing party in a due process hearing.			
When necessary it is a "best practice" for students to have both an IEP and a §504 plan.			
"Stay put" is invoked at the time a parent files a petition for a due process hearing under §504.			
"Stay put" is invoked at the time a parent files a petition for a due process hearing under the IDEA.			

Assignment 5 [due midnight December 3rd]

Parental consent is required prior to a §504 evaluation.			
Parental consent is required prior to an IDEA evaluation.			
An impairment need not prevent, or significantly or severely restrict, the individual in performing a major life activity to be considered “substantially limiting.”			
A school district is obligated to provide related services, such as transportation and nursing care, to students with disabilities if they are necessary for the child to be able to benefit from the special education.			
The determination of whether an impairment substantially limits a major life activity shall be made without regard to the corrective effects of mitigating measures.			
If the parent fails to attend a scheduled §504 meeting, the meeting must be rescheduled.			
If notice of a scheduled IEP meeting is sent to a parent and returned to the school unopened, the school must reschedule the meeting.			
School districts are required to have a prompt and equitable grievance procedure to handle Section 504 and ADA complaints.			
Minor and transitory impairments are generally not protected disabilities under §504 and the ADAAA08.			

This chart was originally created by James F. McKethan, Ed.D., and revised by Mary E. Duncan. Permission for use of this chart was kindly granted by James F. McKethan, Ed.D., whose contact information is as follows:

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